



July 1, 1999

Ms Susanna K. Holt  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

OR99-1841

Dear Ms. Holt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125355.

On March 24, 1999, the Office of the Attorney General received a request for the following information:

- (1) correspondence between Marc Murr and Dan Morales, Jorge Vega, Javier Aguilar, or Harry Potter;
- (2) contracts relating to outside counsel in *State of Texas v. American Tobacco Co.*;
- (3) transcripts of "national tobacco arbitration;" and
- (4) correspondence related to "national tobacco arbitration" by or copied to the persons identified in item (1).

On April 7, 1999, you submitted a request for this office's decision as to the applicability of Government Code sections 552.101, 552.103 and 552.107 to the subject information. On April 14, 1999, you supplemented your request for decision, providing argument in support of applying Government Code sections 552.103 and 552.111 to the subject information, and supplying the following:

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|-----------|--|
| Exhibit 1 | Request for information, dated March 24, 1999; |
| Exhibit 2 | Pages 101-103 of an unidentified transcript;   |

- Exhibit 3      Motion to Sever (Cause No. 5:96- CV-91);
- Exhibit 4      Motion to Dismiss (Cause No. 5:98-CV-29);
- Exhibit 5      Motion to Stay Proceedings (Cause No. 5:98-CV-29);
- Exhibit 6      Response to Motion to Stay (Cause No. 5:98-CV-29);
- Exhibit 7      Letter, dated June 26, 1998; and
- Exhibit 8      Letter, dated September 11, 1998.

The information submitted as exhibits 2, 7, and 8 is apparently responsive to the subject request for information. You indicate that exhibit 8 is a representative sample of information which you assert is protected as work product. Exhibit 2 is apparently three pages of the requested transcript. The balance of the submitted documents is provided in support of your argument. Other than work product, you have not indicated that the submitted information is a representative sample of the responsive information.<sup>1</sup>

On June 29, 1999, you informed this office that the responsive information relates to an investigation being conducted by the Federal Bureau of Investigation (FBI) and that both the FBI and the United States Attorney have requested that the information not be released. You asserted in this communication that the information is excepted from disclosure by section 552.108 of the Government Code. We have reviewed the submitted documents and considered the exceptions you raise.

As section 552.108 is dispositive of this request, we limit this opinion to the application of that exception, which reads in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection investigation, or prosecution of crime;

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

Generally, a governmental body that seeks to avail itself of an exception from disclosure must assert that exception within ten business days of receiving the request for information. Gov't Code §552.301. The failure to timely raise an exception results in the presumption that the information is public. Gov't Code § 552.302. This presumption is "overcome only by a compelling demonstration that the requested information should not be made public." *Hancock v. State Bd. of Ins.* 797 S.W. 2d 379 (Tex. App –Austin 1990, no writ). In addressing the release of information excepted under the predecessor statute to section 552.108, this office held that "the need of a governmental body, other than the body that has failed to timely seek an open records decision, may, in appropriate circumstances be a compelling reason for non-disclosure." Open Records Decision No. 586 (1991). In this case, although you did not timely raise section 552.108 on your own behalf, you assert that the subject information is related to an ongoing criminal investigation and that the investigating agency has requested that the information be withheld from public disclosure. Based upon your representations, we conclude that the subject information may be withheld under section 552.108(a)(1) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 125355

Encl. Submitted documents

cc: Mr. Osler McCarthy  
305 S. Congress Avenue  
Austin, Texas 78704  
(w/o enclosures)